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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 JOSE GALLIMORT,

8 *Petitioner,*

9 vs.

10 D. W. NEVEN, *et al.*,

11 *Respondents.*
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2:13-cv-01909-JCM-VCF

ORDER

14 Petitioner has filed a habeas petition without paying the filing fee or filing a pauper
15 application. It does not appear that a dismissal without prejudice will materially affect a later
16 analysis of the timeliness issue or other issues in regard to a promptly filed new action.¹ The

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18 ¹The papers on file and the online docket records of the relevant federal and state courts reflect the
following.

19 Petitioner was convicted in No. C147074 in the Nevada state district court, pursuant to a bench trial,
20 of first degree kidnapping with the use of a deadly weapon and battery with the use of a deadly weapon.

21 The judgment of conviction was filed on May 26, 1998, and affirmed on direct appeal on March 10,
22 2000. Petitioner sought state post-conviction relief before the time period for filing a petition for *certiorari* had
expired. The state supreme court affirmed the denial of state post-conviction relief on August 7, 2001, and
23 the remittitur issued on September 5, 2001. Absent other tolling or delayed accrual, the federal limitation
period expired one year later on September 5, 2002 – well over a decade prior to the filing of the present
24 improperly-commenced action.

25 Petitioner did file a federal habeas petition previously in No. 3:01-cv-00525-DWH-RAM, which was
dismissed on the merits on August 17, 2004, and affirmed on March 15, 2006, as to the handling of other
26 unexhausted claims. Accordingly, when petitioner subsequently filed another petition challenging the same
conviction in No. 2:10-cv-00295-JCM-PAL, the court transferred the petition to the court of appeals as an
27 application to file a second or successive petition. On May 20, 2010, in No. 10-71149, the court of appeals
denied petitioner authorization to pursue a second or successive petition.

28 (continued...)

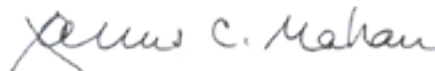
1 present improperly-commenced action therefore will be dismissed without prejudice to the
2 filing of a new action.

3 IT THEREFORE IS ORDERED that this action is DISMISSED without prejudice to the
4 filing of a new petition in a new action accompanied by either the required \$5.00 filing fee or
5 a properly completed application to proceed *in forma pauperis*.

6 IT FURTHER IS ORDERED that the clerk shall send petitioner two copies each of an
7 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital
8 habeas petition form, one copy of the instructions for each form, and a copy of the papers that
9 he submitted in this action.

10 The clerk of court shall enter final judgment accordingly, dismissing this action without
11 prejudice.

12 DATED: October 25, 2103.

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15 JAMES C. MAHAN
16 United States District Judge
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20 ¹(...continued)

21 The foregoing procedural history reflects that the petition very well may be untimely and successive.
22 The analysis of these and other procedural issues will not be materially impacted by a dismissal of this action
23 without prejudice given that: (a) petitioner would have to establish tolling or delayed accrual over a substantial
24 interval – well over a decade – over and above the short interval between the filing of this action and a new,
25 properly commenced action; and (b) the claims and supporting materials clearly are not newly discovered but
26 instead include photocopies of claims and materials submitted years previously, over a decade previously as
27 to the supporting purported evidentiary materials relied upon.

28 The court further notes that petitioner has been on notice from prior actions of the need to either pay
the filing fee or submit a properly-completed pauper application. See, e.g., No. 2:09-cv-0222 (dismissed for
failure to pay filing fee).

Petitioner at all times remains responsible for calculating the running of the federal limitation period
as applied to his case and properly commencing a timely-filed federal habeas action or other proceeding with
exhausted claims. Nothing in this order grants petitioner authorization to pursue a federal habeas petition or
other relief. The court simply is dismissing this improperly-commenced action without prejudice.